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No. 94

In the Supreme Court of the United States

OCTOBER TERM, 1957

FRANK BONETTI, PETITIONER

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENT

J. LEE RANKIN,
Solicitor General,
ROGER FISHER,
Assistant to the Solicitor General,
Department of Justice, Washington 25, D. C.

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There are a number of legislative materials bearing on the issue of statutory construction of Section 22 of the Internal Security Act of 1950 involved in this case which are either not quoted or not referred to in the respondent's brief. For the convenience of the Court during oral argument, and in the consideration of the case, such materials are now presented, without argument, in this memorandum.

The 1950 Act here involved was the sum of three separate legislative enactments, each of which bears on the question of whether the deportation provisions were intended to apply only to those aliens who had been members of the described organizations since

last entering the United States. These acts, and the substance of their provisions here relevant, are:

I. The Act of October 16, 1918—
which provided for the deportation of aliens who were at the time of entering the United States or had thereafter become members of organizations which advocated the overthrow by force and violence of the Government of the United States;

II. The Alien Registration Act of 1940—
which provided that the deportation provisions would apply to aliens who were no longer members of subversive organizations; and

III. The Internal Security Act of 1950—
which added, as a deportable class of aliens, those who after entering the United States had been members of the Communist Party of the United States.

The additional legislative materials to which reference is made are the following. (Throughout this memorandum where matter appears in bold face type the emphasis has been added.)

I

THE ACT OF OCTOBER 16, 1918

1. Text of the Act (40 Stat. 1012):

CHAP. 186.—An Act To exclude and expel from the United States aliens who are members of the anarchistic and similar classes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That aliens who are

anarchists; aliens who believe in or advocate the overthrow by force or violence of the Government of the United States or of all forms of law; aliens who disbelieve in or are opposed to all organized government; aliens who advocate or teach the assassination of public officials; aliens who advocate or teach the unlawful destruction of property; aliens who are members of or affiliated with any organization that entertains a belief in, teaches, or advocates the overthrow by force or violence of the Government of the United States or of all forms of law, or that entertains or teaches disbelief in or opposition to all organized government, or that advocates the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or that advocates or teaches the unlawful destruction of property shall be excluded from admission into the United States.

SEC. 2. **That any alien who,** at any time after entering the United States, **is found to have been at the time of entry, or to have become thereafter,** a member of any one of the classes of aliens enumerated in section one of this Act, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in the immigration Act of February fifth, nineteen hundred and seventeen. **The provisions of this section shall be applicable to the classes of aliens mentioned in this Act irrespective of the time of their entry into the United States.**

SEC. 3. **That any alien who shall,** after he has been excluded and deported or arrested and deported in pursuance of the provisions of this Act, **thereafter return to or enter the United States** or attempt to return to or to enter the United States **shall be deemed guilty of a felony,** and upon conviction thereof shall be punished by imprisonment for a term of not more than five years; and shall, upon the termination of such imprisonment, be taken into custody, upon the warrant of the Secretary of Labor, **and deported** in the manner provided in the immigration Act of February fifth, nineteen hundred and seventeen.

Approved, October 16, 1918.

2. Excerpt from Congressional debate on Section of the 1918 Act (56 Cong. Rec. 8122):

Mr. WALSH. I think this is proper punishment to inflict upon an anarchist who comes to this country and remains here and then is deported; but I wondered what position an alien would be in who had possibly unwittingly joined an organization and had been deported, and when he found that by joining that organization he had brought down that punishment on his head he had really and sincerely reformed and had cast aside all affiliation with that organization and had revised his belief and his practices. He possibly may have left property in this country or a family. Now, if he should attempt to reenter the country there would be no opportunity, as I understand it, for him to show that he was no longer anarchistic in sentiment. The mere fact that he was found guilty on attempting to return to the country would

make him amenable to this penalty, and, further, after he had served his sentence and was seeking to return, after he gets out the Secretary of Labor can again deport him.

The purpose of my inquiry is to ascertain whether there is in existing law or in the proposed law anything that would permit a man who might have been an anarchist when he was deported; but who had sincerely reformed and possibly had proven it in the country to which he had been deported, and had been during the period of his deportation a loyal supporter of that Government—**is there anything that would permit him to come back into the country under the existing law or under this proposed law?**

MR. BURNETT. **I think not; and I do not think we should adopt anything that would,** because it would open the door to too many cases of pretended reformation. * * *

II

SECTION 23 OF THE ALIEN REGISTRATION ACT OF 1940

1. Text (54 Stat. 673):

SEC. 23. (a) The first paragraph of section 1 of the Act entitled "An Act to exclude and expel from the United States aliens who are members of the anarchistic and similar classes", approved October 16, 1918, as amended, is amended to read as follows:

"That any alien who, at any time, shall be or shall have been a member of any one of the following classes shall be excluded from admission into the United States:".

(b) Section 2 of such Act of October 16, 1918, as amended, is amended to read as follows:

"SEC. 2. **Any alien who was at the time of entering the United States, or has been at any time thereafter,** a member of any one of the classes of aliens enumerated in section 1 of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. **The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.**"

2. Text of prop ed amendment offered by Mr. Gwynne (84 Cong. Rec. 10448):

* * * * *

* * * "*Provided, however,* That the fact of prior membership in any organization, association, society, or group referred to in section 1 of this title shall not of itself require deportation, if the said alien shall prove, first, that he had ceased to be a member of such organization, association, society, or group at least 5 years prior to the institution of the deportation proceedings against him; and, second, that such termination of his membership was in good faith and not for the purpose of preventing deportation."

3. Excerpt from statement by Mr. Gwynne in support of his proposed amendment (84 Cong. Rec. 10448):

* * * * *

You might have a situation such as this: An alien might in some unfortunate moment join a prohibited organization. He might be a member one day and resign, and thereafter be active in his opposition to that type of organization. Yet 25 years later, if that fact should be proved, the bill as it is now would require his deportation.

* * * * *

4. Statement by Mr. Hobbs in support of the bill and in opposition to Mr. Gwynne's proposed amendment. Much of this is quoted in Respondent's Brief, pages 18–19. The concluding sentence of that statement was as follows (84 Cong. Rec. 10449):

* * * * *

* * * Title III will help our immigration authorities to preserve America for real Americans, and for those who long to become real Americans—**who have never sinned** by espousing the cause of assassination of our officials or Government. [Applause.]

5. Statement by Senator Connally on behalf of the Senate conferees (86 Cong. Rec. 8343):

* * * * *

This provision refers to membership in communistic or other societies which advocate the overthrow of government by force or violence. In other words, if an alien seeks entry into the United States, and he is at the time a member of a communistic or anarchistic organization which advocates the overthrow of government, we exclude him; but if he enters anyway, and thereafter joins one of these organizations, he is then deportable, and he cannot avoid prosecution by

saying, "Well, I have quit," because **if he ever has been a member since coming into the country he is deportable.**

* * * * *

6. Statement by Mr. Hobbs on behalf of the House conferees (86 Cong. Rec. 9032):

> * * * The pending measure amends that law so that it will provide that any alien who at any time after his entry into the United States shall have been a member of any such organization shall be deported. Therefore, after this bill becomes law, it will be perfectly clear that any alien who has ever been a member of such an organization before coming to this country cannot enter, or if at the time of his entry or at any time thereafter he has been, even for 1 minute, a member of such an organization he shall be deported. * * *

* * * * *

III

SECTION 22 OF THE INTERNAL SECURITY ACT OF 1950

1. The relevant text is given in Respondent's Brief at pages 2–3.

2. An excerpt from the Senate Report is given in Respondent's Brief at page 20.

IV

IMMIGRATION AND NATIONALITY ACT OF 1952

(This Act does not apply to petitioner's case which is governed by the legislation in effect in 1950, but both parties construe the 1950 legislation and the 1952 Act as meaning the same thing so far as

grounds for deportation arising "after entering" or "after entry" are concerned:)

1. The relevant text is given in Petitioner's brief at pages 3–4.

2. Following are excerpts from Section 244 (a), dealing with suspension of deportation, which may be relevant by virtue of the contrast in language (66 Stat. 163):

> SEC. 244. (a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—
>
> * * * * *
>
> (2) **last entered** the United States within two years prior to or at any time after the date of enactment of this Act; is deportable under any law of the United States solely for an act committed or status existing **prior to or at the time of such entry** into the United States and * * *
>
> (3) **last entered** the United States within two years prior to, or at any time after the date of enactment of this Act; is deportable under any law of the United States **for an act committed or status acquired subsequent to such entry** into the United States and is not within the provisions of paragraph (4) or (5) of this subsection; was possessed of all of the requisite documents **at the time of such entry** into the United States; * * *
>
> (4) **last entered** the United States within two years prior to, or at any time after the date of

enactment of this Act; * * * has been physically present in the United States for a continuous period of not less than ten years **after such entry** and immediately preceding his application under this paragraph and * * *

(5) is deportable under paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17) or (18) of section 241 (a) for an act committed or status acquired **subsequent to such entry** into the United States or having **last entered** the United States within two years prior to, or at any time after the date of enactment of this Act, is deportable under * * *

* * * * *

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.
ROGER FISHER,
Assistant to the Solicitor General.

APRIL 1958.